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In the Delhi High Court

Case No : Writ Petition (C) No''s. 1374 and 1375 of 2004 and CM No. 1163 of 2004

Bhoruka Steel Ltd. APPELLANT

Vs

Appellate Authority for Industrial and Financial Reconstruction RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18(5)

Citation : (2005) 59 SCL 643

Hon'ble Judges : S. Ravindra Bhat, J;D.K. Jain, J

Bench : Division Bench

Advocate : Vivek Sibal and Rohan Modgil, for the Appellant; Puja Jain and Prem Lata Bansal, for the Respondent

Judgement

1. Since at the relevant time, Appellate Authority for Industrial and Financial Reconstruction (for short ''the AAIFR''), was not functional order, dated 7 January 2004, passed by the Board for Industrial and Financial Reconstruction (for short ''the BIFR'') was challenged by means of this writ petition. Taking note of the report of the operating agency (IDBI), by the impugned order, the BIFR has declared the scheme, sanctioned in terms of AAIFR''s order dated 31 August 2001 as failed. As a consequence thereof certain directions were issued to the operating agency, including the issuance of an advertisement for change of management of the company.

2. While issuing notices to the respondents, operation of the impugned order was stayed on 4 February 2004. When the matter came up for consideration, it was stated on behalf of the company that except for the payments deferred under the sanctioned scheme, dues of all the financial institutions and banks have been paid and the scheme has been implemented in totality. Petitioners were directed to place on record all the subsequent developments by way of an affidavit, which has been done.

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We have heard learned counsel for the petitioners and the operating agency. The Income Tax Department is represented by Ms. Premlata Bansal. No other respondent has chosen to appear.

3. In the additional affidavit filed by the petitioners on 15 July 2004, it is stated that the rehabilitation scheme sanctioned by the AAIFR vide order dated 31 August 2001 has been substantially implemented inasmuch as except for some dues of the leasing companies, some public sector undertakings and statutory authorities all one time settlements with the banks and financial institutions have been honoured. It is stated that there has been no default in making payments as per the sanctioned scheme and future Installments to the leasing companies etc., shall be paid on the respective due dates, The details of the amounts payable by the petitioner company as per the sanctioned scheme and the sum actually spent/paid up to 30 June 2004 have been given in the form of a chart, which is reproduced here under for the sake of ready reference:

Particulars /td> As per approved scheme During the quarter Cumulative up to the end of quarter ending 30-6-2004 Balance expenditure to be incurred

Capital Expenditure 228 137 183 45

OTS of Canara Bank dues 1237 0 1237 0

OTS of Institutional/ debenture holders dues 1157 0 1157 0

Repayment of MSTC dues 383 0 275 108

Repayment of leasing companies dues 363 10 297 66

Payment of statutory dues 200 47 107 93

Payment to FGFSL Ltd. 62 0 62 0

Cash losses during rehabilitation period 153 0 153 0

Margin money for working capital 111 0 111 0

Total 3894 194 3582 312

4. The contents of the chart are not disputed by learned counsel for the IDBI, the operating agency. It appears that dues of the banks and financial institutions have been cleared and the outstanding liabilities are only towards MSTC, leasing companies and statutory dues. In the affidavit, filed by the Managing Director of the petitioner-company, he has undertaken to clear all the dues of the leasing companies, MSTC and Government departments on the due dates, stipulated in the said scheme.

Mr. R.C. Purohit, Managing Director of the petitioner No. 1 company is present in Court. He has been identified by learned counsel for the petitioners. Mr. Purohit reiterates what is stated in the affidavit and undertakes to the Court that he will strictly comply with the terms of the sanctioned scheme. He will remain bound by

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the undertaking given to the Court.

5. In view of the subsequent developments, projected in the additional affidavit, we feel that the scheme sanctioned by the AAIFR has been substantially implemented and in the light of the undertaking given by the existing promoters, it would be expedient to give one chance to them to revive the company. At this juncture, it is pointed out by learned counsel for the petitioners that an application u/s 18(5) of the Sick Industrial Companies (Special Provisions) Act, 1985 had been filed before the BIFR in the month of March 2004, seeking some modification of the sanctioned scheme dated 31 August 2001 but the same has not yet been taken up for consideration. Learned counsel prays that in order to facilitate implementation of the sanctioned scheme in totality and to the satisfaction of everyone, BIFR may be directed to consider this application at the earliest.

6. Accordingly, without going into the merits of the other issues raised in the writ petition, we set aside the impugned order and request the BIFR to take up the said application for consideration as expeditiously as practicable and if possible before 31 July, 2004, provided that all the parties are represented before them on the date fixed. We may, however, clarify that we have not expressed any opinion on the merits of the said application, which shall be dealt with by the BIFR on its own merits.

7. The writ petition stands disposed of in the above terms.

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